IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.380 OF 2006

IN

SUMMARY SUIT NO.780 OF 2006

Karrox Technologies Ltd. ...Plaintiff.

vs.

Nayan C. Maishari. ...Defendant.

Ms.S.U.Deshmukh, for Plaintiff.

Mr.Amit S. Patnis with Naina Chheda, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 6th December, 2006.

P.C.:-

1. The plaintiff has filed the suit for recovery of the amount which is mentioned in the contract between the parties as the amount of liquidated damages to which the plaintiff would be entitled in case the defendant commits breach of the contract. In view of the provisions of section 73 and 74 of the Indian Contract Act and the law laid down by the Supreme Court in the case of "ONGC Vs. Saw pipes

Ltd., 2003 IV AD (S.C.) 254, it is now settled law that the first question to be determined in this case would be "whether the amount mentioned in the Contract to be paid and disputed in the suit is the amount of penalty or pre-estimated damages." That inquiry obviously cannot be made in the summary jurisdiction. Therefore, the suit cannot be decreed outright. The summons for judgment is disposed of. The defendant is granted unconditional leave to defend the suit. Written statement to be filed within four weeks from today. Suit be transferred to commercial causes.